

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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MICHAEL NIEVES,

Plaintiff,

-v-

PHILIP MEAGHER et al.,

Defendants.
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20-cv-990 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On October 27, 2022, Defendants filed a letter indicating that Plaintiff had passed away. Dkt. No. 49 at 1. That letter was served at the last known address of Plaintiff at the Mid-Hudson Forensic Psychiatric Center, as well as the Bellevue Hospital Prison Ward. *Id.* at 2.

Federal Rule of Civil Procedure 25(a)(1) provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). “A statement noting death must be served” “on the parties as provided in Rule 5.” Fed. R. Civ. P. 25(a)(3). Defendants properly served the “statement noting the death” under Rule 5. *See* Fed. R. Civ. P. (5)(b)(2)(C) (stating that a “paper is served . . . by . . . mailing to the person’s last known address—in which event service is complete upon mailing”); *see also Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 469 (2d Cir. 1998). It has now been more than 90 days after service of Defendants’ statement noting the death of Plaintiff. No motion for substitution has been filed. Accordingly, this action is dismissed pursuant to Rule 25(a)(1). *See English v. Murphy-Lattanzi*, 2015 WL 630248, at *2 (E.D.N.Y. Feb. 12, 2015) (“Rule 25(a)(1) provides a ninety-day window within which to file a motion for substitution, calculated from the filing of the suggestion of death. Failure to file a motion for substitution within the prescribed period generally requires dismissal of the action.”).

The Clerk of Court is respectfully directed to close this case and related member Case No. 21-cv-7171.

SO ORDERED.

Dated: March 31, 2023
New York, New York

LEWIS J. LIMAN
United States District Judge